

21 April 2018

The Head of the Royal Commission into misconduct in the Banking, Superannuation and the Financial Services Industry
Honourable Kenneth Madison Hayne AC QC
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Dear Hon. Hayne

A Public Submission pursuant to the Royal Commissions Act 1902 (Cth) and clauses (g), (h) and (j) of the Terms of Reference for the Royal Commission into misconduct in the Banking, Superannuation and Financial Services Industry that details systemic failings in the non-statutory Council of Financial Regulators performance over the Credit Cards Payments System and the highly differentiated Credit Card Products

Click on [Thirty Questions and Supporting Evidence](#) for the Royal Commission to consider asking -

- A. ["the principal regulator of the payments system through the PSB"](#), and Chair of the [Council of Financial Regulators](#), which -
- (1) has [extensive powers](#) to request information from payment system participants and operators regarding *inter alia* [Credit Cards](#) under, amongst other clauses, [Part 5—Miscellaneous, Section 26](#) of the [Payment Systems \(Regulation\) Act 1998](#);
 - (2) is bound to "inform the Government, from time to time, of the Bank's monetary and banking policy" under [Section 11\(1\) of the Reserve Bank Act 1959](#) having regard to its obligations under [Section 10\(2\) 'Functions of Reserve Bank Board' of Reserve Bank Act 1959](#) to "**best contribute to..... the economic prosperity and welfare of the people of Australia**"; and
 - (3) holds authority under [Division 4, Section 18](#) of the [Payments System Regulation Act 1998](#) to set Standards that "[are in the public interest](#)" for a previously 'designated Payments System (under [Division 2—Section 11 of the Payment Systems \(Regulation\) Act 1998](#) after having also imposed an [Access Regime](#) under [Section 12](#) Between 1960 and 1980 Australia's 'central bank', the Reserve Bank, diligently regulated Australia's commercial bank interest rates relying on, *inter alia*, [Section 50](#) of the [Banking Act 1959](#) "[..... to achieve monetary policy, public sector financing and sectoral assistance objectives.....](#)", as well as safeguarding against further bank collapses (chronicled in [Chapter 17](#)). The RBA capped the maximum interest rate on Credit Cards in Australia at 18% until April 1985; OR
- B. the Chair of ACCC as to whether particular aspects of Credit Card Issuers' marketing representations fall within the ACCC's definition of [Unconscionable Conduct](#); OR
- C. the Chair of APRA regarding his undertaking to a Senate Enquiry on 3 June that included:
"....the margins on credit card business look very high, certainly to any other form of credit, and certainly I can't sit here today with an explanation of why that is,"..... and "Informing us all about that is probably a useful piece of work"? OR

- D. the Chair of ASIC to inform what action ASIC took to protect [Financially Uneducated And Vulnerable](#) Credit Cardholders that have poor [Financial Literacy Capacity](#), after ASIC published [Report 224 "Access to financial advice in Australia"](#) in Dec 2010 that included:

" the ABS measured skills in document literacy, prose literacy, numeracy and problem solving and found that approximately 7 million (46%) of Australians (and 7.9 million (53%) of Australians aged 15 to 74) had proficiency less than the minimum required for individuals to meet the complex demands of everyday life and work emerging in the knowledge-based economy' for document literacy and numeracy respectively".

The UK Guardian article '[The interest-free credit card trap snaring unwitting borrowers](#)' is rife with examples of UK Credit Card Issuers' [Predatory Marketing](#) directed at [Financially Uneducated And Vulnerable](#) Credit Cardholders that [Lack Financial Acumen](#). There is a welter of evidence that U.S. Credit Card Issuers are not immune from similar [Unconscionable Credit Card Advertising](#). One could presuppose: "Well why shouldn't it be any different in Australia?" It SHOULD be different in Australia, because Australia's 'central bank' has unique powers and exceptional responsibilities "**...to..... the economic prosperity and welfare of the people of Australia**" and for its PSB to always [Act in the Public Interest](#), not held by the 'central bank' of the UK or the USA.

Below is an extract from [Australia's Principal Regulator of the Payments System](#):

"The Reserve Bank of Australia's -

- A. powers to gather financial information from ADIs under [Part 5—Miscellaneous, Section 26](#) of the [Payment Systems \(Regulation\) Act 1998](#); and
- B. responsibilities to '*inter alia*' "**best contribute to..... the economic prosperity and welfare of the people of Australia**" in terms of [Section 10\(2\) 'Functions of Reserve Bank Board' of Reserve Bank Act 1959](#) which includes -
"inform the Government, from time to time, of the Bank's monetary and banking policy" under [Section 11\(1\) of the Reserve Bank Act 1959](#);
to set Standards that "**are in the public interest**" relying on [Division 4, Section 18](#) of the [Payments System Regulation Act 1998](#) for a designated Payments System in 2001 (under [Division 2—Section 11 of the Payment Systems \(Regulation\) Act 1998](#); and
to re-regulate commercial bank interest rates relying on [Section 50](#) of the [Banking Act 1959](#) that "**are in the public interest**",

are more extensive/inflexible/onerous than the -

1. [Bank of England](#), that was not nationalised as Britain's central bank until 1946, which is a corporation wholly owned by the UK government - the '[Corporate governance: Board responsibilities](#)' – SS5/16 (Short form) focus on the Corporates it regulates with no apparent obligation to best contribute to the peoples of Britain; and
2. [U.S. Federal Reserve that was established as the United States' central bank until 1913](#), although the below item 7. "[Promoting Consumer Protection and Community Development](#)." obligates the U.S. Fed to research the impact of financial services practices on consumers and communities:

"The Federal Reserve advances supervision, community reinvestment, and research to increase understanding of the impacts of financial services policies and practices on consumers and communities."

Australia's 'central bank' has never exercised its rights -

- * under [Part 5—Miscellaneous, Section 26](#) of the [Payment Systems \(Regulation\) Act 1998](#) to ask for financial data from the major [Credit Card Issuers](#) of [Interest & Penalty Fees](#) revenue for each of their Credit Cardholders for all [Credit Card Products](#) for a minimum of 12 months in order to establish if the [User Pays Principle](#) applies, notwithstanding that the RBA argued for greater application of the [User Pays Principle](#) in its paper "[Reform of Credit Card Schemes in Aust: "A Consultation Document"](#) in Dec 2001; or
- * under [Section 11\(1\) of the Reserve Bank Act 1959](#) to "inform the Government, from time to time, of the Bank's monetary and banking policy" having regard to its obligations under [Section 10\(2\) 'Functions of Reserve Bank Board' of the Reserve Bank Act 1959](#) to "**best contribute to..... the economic prosperity and welfare of the people of Australia**", to set new Standards under [Division 4, Section 18](#) of the [Payments System Regulation Act 1998](#) to re-regulate a maximum Purchase interest rate and a maximum Cash Advance interest rate after it published [LOAN RATE STICKINESS: THEORY AND EVIDENCE](#) in June 1992 to adopt other [User Pays Principle](#) fee changes that -
 - * the RBA recommended in [Dec 2001](#); and
 - * the [Writer](#) recommended in [Section 8](#) of his letter (on CD) to the [RBA dated 8 Dec. 2011](#) - explained in Point 9 of [Supporting Evidence re 1st Question](#).

References to this Submission:

- A. [Three Pivotal 'Landmark' RBA Published Papers in the last 26 years](#)
- B. [The Writer's CD submission to RBA sent 8 Dec '2011](#)
- C. [Over 550 Documents and Defined Terms](#)

Parliamentary Acts, MoU's and RBA Credit Cards Regulatory Decisions relied upon in this Public Submission

- * [Banking Act 1959](#) - [Banking Act 1959](#) (222 pgs)
- * [Reserve Bank Act 1959](#) - [Reserve Bank Act 1959](#) (57 pgs)
- * [Payment Systems \(Regulation\) Act 1998](#) - [Payment Systems Board Act 1998](#) (33 pages)
- * [APRA Act 1998](#) - [APRA Act 1998](#) (72 pgs)
- * [Australian Securities and Investments Commission Act 2001](#) (394 pgs)
- * [Competition and Consumer Act 2010](#) (544 pgs)
- * [Memorandum of Understanding - Australian Competition and Consumer Commission and Reserve Bank of Australia dated 8 Sept 1998](#)
- * [Memorandum of Understanding - Australian Prudential Regulatory Authority and Australian Securities and Investments Commission dated 8 Oct 1998](#)
- * [Memorandum of Understanding - Australian Prudential Regulation Authority and Reserve Bank of Australia dated 12 October 1998](#)
- * [Memorandum of Understanding - Australian Prudential Regulation Authority and Australian Competition and Consumer Commission dated 30 November 1999](#)
- * [Memorandum of Understanding - Australian Securities and Investments Commission and Reserve Bank Of Australia dated 18 March 2002](#)
- * [Credit Cards Regulatory Decisions by the RBA](#)

Primary Sections of Acts relied upon:

- [Section 50 'Control of interest rates' of the Banking Act 1959](#)
- [Section 10\(2\) 'Functions of Reserve Bank Board' of Reserve Bank Act 1959](#)
- [Section 11\(1\) 'Differences of opinion with Government on questions of policy' of the Reserve Bank Act 1959](#)
- [Division 2—Section 11 of the Payment Systems \(Regulation\) Act 1998](#)
- [Division 3—Section 12 of the Payment Systems \(Regulation\) Act 1998](#)
- [Division 4---Section 18 of the Payments System \(Regulation\) Act 1998](#)

Declaration that the Writer is not conflicted

The **Writer** -

1. worked for CBA for 37 years prior to retirement in 2007;
2. owns two [Credit Cards](#) and a [Debit Card](#);
3. pays no [Annual Cardholder Fee](#) on either of his [Credit Cards](#);
4. earns [Reward Points](#) under a [Rewards Programme](#) on one of his two [Credit Cards](#);
5. uses the other [Credit Card](#) when offshore because it doesn't charge an explicit F/X fee for each transaction and exchanges Purchases in foreign currencies back to AUD at close to the mid-rate;
6. uses his [Debit Card](#) when offshore because it doesn't charge an F/X conversion fee when withdrawing a foreign currency in cash eg. in USD or in Euros; and
7. has not paid any [Interest or Penalty Fees](#) for at least 20 years because he has provided written authorisation to his two [Credit Card Issuers](#) to debit his CBA Streamline account for his monthly [Closing Balance](#) on the [Payment Due Date](#).

Yours sincerely



Philip Johnston

CLICK ON BELOW QUESTION NUMBERS	Question Recipient	Issue/Problem/Negligence/Discrimination 'et al'	Number of Supporting Evidence Documents
1st	Royal Commissioner	Will the Royal Commissioner request financial data from the primary six or seven Credit Card Issuers that identifies the contributors of Interest And Penalty Fees Revenue to test the Writer's calc that Persistent Revolvers (that account for 12.58% circa of 7,515,000 Credit Cardholders - June 2016), yet contribute 80 circa of all Interest And Penalty Fees Revenue ?	14
2nd	Governor of the Reserve Bank	Why did the Reserve Bank published LOAN RATE STICKINESS: THEORY AND EVIDENCE in June 1992 and never act upon its 'sticky' findings re the plummeting Overnight Cash Rate ?	12
3rd	Governor of the Reserve Bank	What did the Reserve Bank hope to achieve from publishing Reform of Credit Card Schemes in Aust: "A Consultation Document" in March 2001? Why hasn't the RBA over the subsequent 17 years informed the Commonwealth government, as obligated under Reserve Bank Act 1959 - Section 11, 'Differences of opinion with Government on questions of policy' , of the need to determine in the Public Interest new Standards to apply the User Pays Principle to the Retail Supply Side of Credit Card Products ?	9
4th	Governor of the Reserve Bank	Will the Reserve Bank set a new Standard , pursuant to Division 4 Section 18 , to replace the debt 'lure' of an Interest Free Period with a - * Concessional Interest Rate Period ; and * Purchase Usage Fee , for each Purchase with a Credit Card , 'so that each user pays' for the benefits of a Revolving Line/s of Credit ?	2
5th	Governor of the Reserve Bank	Does the Governor of the Reserve Bank agree with the former Assistant Commissioner, Dr. Malcolm Edey's, below response to a question from the Acting Chair of the Senate Economics Legislation Committee on 1 June 2015? "... we do not have an interest rate regulator in Australia..... What we do have is an ACCC that can investigate uncompetitive conduct if they see it, but they clearly have not seen it in this market."	2
6th	Governor of the Reserve Bank	Does the Governor of the Reserve Bank concur with the 1st paragraph on page 3 of Senate 'Economics Reference Committee' summary report titled Interest rates and informed choice in the Australian credit card market dated Dec. 2015 which justified Dr. Edey's response (listed in Question 5) which asserted that the ACCC is responsible to monitor and	3

		regulate credit card interest rates, even after the RBA had Designated, established an Access Regime and Determine a Standard/s , thereby inheriting the ACCC's responsibilities?	
7th	Governor of the Reserve Bank	Does the Governor of the Reserve Bank agree with Dr. Malcolm Edey's below responses to the Senate 'Economics Reference Committee' on 1 June 2015? "Yes, the financial system works through competition. The basic wholesale interest rate is the cash rate, which we set, and then competitive forces will cause other interest rates to move up and down with the cash rate. That is the way the effect of policy is transmitted to the wider economy."	5
8th	Governor of the Reserve Bank	Is the Governor of the Reserve Bank in possession of empirical evidence that supports Dr. Malcolm Edey's contention (in Dr. Edey's responses to the Acting Chair of the Senate 'Economics Reference Committee' on 1 June 2017) that a viable opportunity exists for Credit Cardholders that have managed to ' <i>chalk up</i> ' considerable debit, often across several Credit Cards, to consolidate those debts in a zero or introductory low interest rate Credit Card to "... pay off their loans more quickly" ?	4
9th	Chairman of APRA	APRA Chairman responded to a Senator Hearing in Canberra on 3 June 2017 "...the margins on credit card business look very high , certainly to any other form of credit, and certainly I can't sit here today with an explanation of why that is," and "Informing us all about that is probably a useful piece of work" . What did the Council of Financial Regulators action <i>post</i> 3 June 2017 to understand why Credit Card interest rates are so high, when the Cash Rate is at an all-time low of 1.5%?	8
10th	Governor of the Reserve Bank	Has the Governor of the Reserve Bank who is the Chair of the Council of Financial Regulators , and co-wrote LOAN RATE STICKINESS: THEORY AND EVIDENCE in June 1992, ever discussed with the other two members of that Council, namely APRA and ASIC, the RBA informing the Government, pursuant to section 11(1) of the Reserve Bank Act 1959 , of the need for the RBA, pursuant to section 50 of the Banking Act 1959 , to re-regulate a maximum interest rate for Purchases and for Cash Advances due to the burgeoning gap between the Overnight Cash Rate of 1.5% and interest rates charged on low interest and on high interest Credit Cards that peak at 29.49% for a Cash Advance using a Latitude Financial "Go MasterCard" ?	8
11th	Royal Commissioner	Will the Royal Commission recommend to the Chair of the Three Financial Regulators to provide Minutes of their quarterly meetings?	7

12th	Governor of the Reserve Bank	Is the Board of the Reserve Bank which is chartered under Section 10(2) 'Functions of Reserve Bank Board' of the Reserve Bank Act 1959 to "best contribute to..... the economic prosperity and welfare of the people of Australia" aware of the primary findings of the reports (published from 2005) from the Productivity Commission, the ABS and ASIC that classify and quantify the Financial Literacy Capacity of Australians that are ranked as low as less than Level 1 up to Level 5?	3
13th	Chairman of ASIC	Will the Chair of ASIC that is bound by Part 1-Preliminary Division 1 Objects of the ASIC Act 2001 to - * "improve the performance of the financial system and entities in it; and * "receive, process and store, efficiently and quickly, information that is given to us" , inform what action ASIC took to protect Financially Uneducated And Vulnerable Credit Cardholders that have poor Financial Literacy Capacity , after ASIC published Report 224 "Access to financial advice in Australia" in Dec 2010?	1
14th	Chair of Council of Financial Regulators	Will the Chair of the Council of Financial Regulators provide to the Royal Commission a schedule of the respective responsibilities of the RBA, APRA and ASIC (and the clauses relied upon in their respective Acts listed at the top of this letter), that satisfy the 'Terms of Reference' and 'Statement of Expectations' required under the PGPA Act , that obligates each regulator to ensure competition amongst Credit Card Products which involves seeking information to establish that Credit Card Issuers are not engaging in Numeracy And Literacy Discrimination through Unconscionable Credit Card Advertising targeted at Credit Cardholders with low Numeracy and Literacy Skills ?	5
15th	Governor of the Reserve Bank	Will the Governor of the Reserve Bank inform why its Payments System Board's 'Responsibilities and Powers webpage does not also list the Banking Act 1959 under legislation that governs the Payment Systems Board's responsibilities and powers?	1
16th	Chair of Council of Financial Regulators	Will the Chair of the Council of Financial Regulators inform if it sought financial data from the primary six or seven Credit Card Issuers , that includes those issued by Citibank and Latitude Financial (<i>nee</i> G.E. Capital), that identifies the number, Outstanding Indebtedness and demography of Credit Cardholders that are Persistent Revolvers after the RBA quantified in Graph 7 of RBA Submission to the Senate Inquiry into Matters Relating to Credit Card Interest Rates - Aug 2015 the indebtedness borne by Persistent Revolvers ?	3
17th	Chairman of ACCC	Will the Royal Commission ask the Chairman of the ACCC, Mr. Rod Sims, to examine the information in advertisements for	2

		Credit Cards (explained in the Nine Examples within Labyrinth of 'Concealed Spiders'), with particular regard to obligations under the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Act 2011 , to determine if any represent Predatory Advertising , <i>ipso facto</i> Unconscionable Conduct (based in the ACCC's description of Unconscionable Conduct)?	
18th	Chairman of ACCC	Will the Royal Commission ask the Chairman of the ACCC, Mr. Rod Sims, if the ' Conditions of use ' booklets issued by St. George Bank, ANZ and Westpac (summarised in table in Chapter 1) with text in small fonts constitute Unconscionable Conduct ?	3
19th	Royal Commissioner	Will the Royal Commission recommend to the Three Financial Regulators that they use their existing regulatory powers to require all Credit Card Issuers to simplify their Credit Card Products so that their Credit Cards ' Conditions of Use ' booklet, together with any Schedule/s referred to therein, do not exceed - (a) 50 pages in text no smaller than Arial 10; and (b) the existing height and width of the booklet?	4
20th	Royal Commissioner	Does each of the Four Pillars reducing their low interest credit card by 5% <i>circa</i> in recent months, amidst the prospect of a Royal Commission, evidence that the Four Pillars that issue 80% of Credit Cards used in Australia, were uncompetitive during the Council of Financial Regulators 'watch' , when each of the RBA, ASIC and APRA have regulatory obligations to the Australian public to ensure real competition amongst Credit Card Issuers, under ' <i>inter alia</i> ' Section 10(2) 'Functions of Reserve Bank Board' of Reserve Bank Act 1959 to ' best contribute to..... the economic prosperity and welfare of the people of Australia ' and for the PSB to always Act in the Public Interest ?	4
21st	Royal Commissioner	Will the Royal Commission recommend to the Three Financial Regulators that they use their existing regulatory powers to ban Reward Programs ?	6
22nd	Royal Commissioner	Will the Royal Commission recommend to the Three Financial Regulators that they use their existing regulatory powers to ban Credit Card Issuers paying third party credit card websites (finder.com , canstar.com.au , iselect.com.au ' <i>et al</i> ') to market/advertise/promote/recommend in any way, shape or form their Credit Card Products because such advertisements are often misleading and deceptive and targeted at Credit Cardholders with low Financial Literacy Capacity as classified/quantified by the Productivity Commission and the ABS?	3
23rd	Royal Commissioner	Will the Royal Commission recommend to the Three Financial Regulators that they use their existing regulatory powers to ban any Credit Card Issuer offering Balance Transfer Interest	8

		Free or Very Low interest introductory offers which 'poach' profitable Financially Uneducated And Vulnerable other bank Credit Cardholders because Persistent Revolvers that Lack Financial Acumen contribute 80% <i>circa</i> of all Interest and Penalty Fees Revenue generated from Credit Card Products ?	
24th	Royal Commissioner	Will the Royal Commission ask the ASIC chairman, James Shipton, why ASIC made the following statement in ASIC's Submission to the Productivity Commission Inquiry into competition in the Australian financial system - Sept 2017 ? "A senate inquiry submission by Treasury noted that in 2013 only 30% of surveyed users reported paying interest on their credit card balance. ⁹⁸ Contrary to this self-reporting though, the share of balances attracting interest at the time was in fact closer to two-thirds. ⁹⁹ "	1
25th	Royal Commissioner	Will the Royal Commission recommend to the Governor of the Reserve Bank that it provide to the House of Representatives in the Commonwealth Parliament an annual written 'Statement on the Conduct of Monetary Policy' which includes, <i>inter alia</i> - A. an annual written 'Report on the Profitability of Credit Cards'; and B. certifies that Visa and MasterCard separately complied with the two weighted-average Interchange Fee benchmarks, including 'companion cards', during the relevant year, namely 0.50% for Credit Cards and 8 cents for Debit Cards ?	3
26th	Chair of Reserve Bank Board of Directors	Will the Royal Commission ask the Board of Directors of RBA to declare their aggregate - * Annual Cardholder Fees paid; and * Interest Costs paid, by the eight members in the 12 months to 30 June 2017 for enjoying the convenience of the Lines of Credit provided by their personal Credit Cards?	1
27th	Governor of the Reserve Bank	Will the Royal Commission ask the Governor of the Reserve Bank what investigations the Reserve Bank has undertaken with Credit Card Issuers, the three Credit Reporting Agencies, Financial Counsellors and Credit Card Distress Authorities to understand the number of Credit Cardholders that are experiencing Extreme Financial And Emotional Distress and the various financial quanta of that distress?	7
28th	Governor of the Reserve Bank	Will the Royal Commission ask the Governor of the Reserve Bank what the Reserve Bank has done, and when it did it, to ensure that Credit Card Issuers do not issue further Credit Cards to applicants that are experiencing Extreme Financial And Emotional Distress due to already having been issued several Credit Cards?	7

29th	Governor of the Reserve Bank	Will the Royal Commission ask the Reserve Bank to draw upon its existing Extensive powers to establish a Standard for a 'Uniform Credit Evaluation Methodology' that all Credit Card Issuers must observe similar to NAB's Microenterprise Loans because too many Australian adults have obtained Credit Cards with excessive interest rates which would be lower if the payment defaults were lower due to a robust designated 'Uniform Credit Evaluation Methodology' that all Credit Card Issuers observed?	7
30th	Governor of the Reserve Bank	Will the Royal Commission recommend that the Reserve Bank set a new Standard, pursuant to Division 4, Section 18 , that requires all Credit Card Issuers to issue a 'Provisional' Charge Card to any applicant under the age of 21 that has not previously held a Credit Card ? Any such applicant, predominantly school leavers, would need to repay the entire Closing Balance by the Payment Due Date for a minimum of three months, prior to being issued with a Credit Card ?	2